[APPELLATE CRIMINAL JURISDICTION]

THE KING .. .. .. Respondent

vs.

ONG CHWEE HOH and NG GEOK SENG

Appellants

[SINGAPORE MAGISTRATE'S APPEALS
Nos. 51 and 54 of 1932]

Ordinance No. 158 (Tobacco Duties), Sections 25 & 49—Supposed smuggling gang—Fine on supposed employees of unknown principals—Petition of Appeal.

When a fine is imposed it should be commensurate with the offence of which the prisoner has been convicted and it should not be inflicted with a view to punishing wealthy principals who have not been discovered.

If it is alleged in a petition of appeal that the conviction is against the weight of evidence the petition should specify in what way the conviction is against the weight of evidence.

The appellants were convicted in the District Court Singapore with abetment of the offence of importing without a licence one hundred and twelve pounds of dutiable tobacco an offence punishable under Section 109 of the Penal Code and Sections 25 and 49 Ordinance 158 (Tobacco Duties). Each appellant was fined $500 and in default of payment 12 months R.I. in accordance with section 44(1) of Ordinance 158.

The following paragraphs appeared in the District Judge's Grounds of Judgment.

(10) In dealing with Revenue cases however it is merely ostrich like *when considering sentence* to overlook the fact that in many cases men in very humble circumstances, often without regular employment, seem automatically to get the assistance of able counsel and to carry hopeless cases on to appeal. In nearly every case like the present one where there are signs of *organised* smuggling accused are defended and often appeal. This, I take it, shews, as clearly as the other evidence that there is money behind the smugglers and if this money is obtained by defrauding the revenue it is reasonable to get as much of it back as possible to revenue and also to try to reduce the profits of smuggling and make smuggling unprofitable for the organisers and uncomfortable for the agents.

(12) The persons caught are not usually the leaders. They expect either to have their fines paid or to be compensated for the time spent in prison. I try my best not to send Revenue Offenders to prison for first offences but to arrive if possible at a fine which the organisation will pay and which at the same time will inconvenience them. If they will not pay a fine then their agents must go to gaol for a period which will annoy them and during that time the organisation must compensate their agents and support their dependents. In my experience all parties look on the whole question of sentence in this business-like way. I accordingly work out my fines for agents in cases like the present one on a "twelve-months-in-lieu" basis. If these cases show no signs of diminishing soon I shall perforce have to raise the period and the corresponding fine and may consider awarding both imprisonment and fine.

During the argument His Lordship pointed out that the Petition of Appeal must specify in what way the conviction is "against the weight of evidence." (See *Lye Boon Hong & Another* v. *Ishihara Sanggo Kaiun Goshi Kaisha*, 1 Malayan L.J. 175. The appeal was heard on the 12th and 13th December, 1932.

Fung for Ong Chwee Hoh.

Wilson for Ng Geok Seng referred to *R.* v. *Teo Woo Tin*, 1 Malayan L.J. 124.

McElwaine, D.P.P. for the Crown.

Cur. Ad. Vult.

MURISON, C.J.—The evidence in this case is not so ample as I should have liked, but I am, nevertheless, satisfied that the Magistrate, who has taken a lot of care over the matter, was right in convicting in both cases.

Smuggling cases at dawn on any one of a thousand points on a long coast-line are not the kind of cases where you get a lot of direct evidence. There is, however, I think, enough. There is no doubt in my mind that accused No. 1 drove the car. He denied that, and so there is no explanation why he is there: the tobacco is dumped into the house from which his car emerged. As for accused No. 2 he denies ownership of the car: he gave a wrong name: a tobacco book is found in his room and he is not a tobacco dealer and does not even live over a tobacco shop. He owns a car, but does not drive: he does not reclaim his car.....

I have no doubt that both were parties to the organized smuggling in this case and that they were both properly convicted.

As to sentence I have some doubt whether the scale suitable for the resources of a supposed (or even proved) gang is correct. In Mayne's

Criminal Law of India page 28 (14th edition, that of 1914) it is stated that:

"A heavy fine ought not to be imposed on the supposition that the accused has wealthy allies."

The reference given for this statement is Ratanlal 556. But in the latest edition of Ratanlal (12th edition of 1930) this opinion is omitted from the place which it previously occupied.

The matter is not free from difficulty. The usual rule is that fines must be measured by the means of the offender and the nature of the offence. The authority for it is given as 7 W.R. (India) Criminal Rulings page 37 which page is missing from the copy of volume 7 in our Library. It is clear anyhow that there may be, as there is here, a case where the means of the offender are trivial and the nature of the offence is serious. In such cases I agree with the D.P.P. that a fine commensurate with the nature of the offence must be given, whether the offender can pay it or not. But it must not be inflicted with any eye on the existence of a gang of wealthy allies. It is given because the nature of the offence demands it.

Upon the whole I am of opinion that the sentences are not unreasonable.

I dismiss the appeals and confirm the convictions and sentences.

Appeal dismissed. Convictions & Sentences Confirmed.

Solicitor for Ong Chwee Hoh—*S. Fung.*

Solicitors for Ng Geok Seng—
Battenberg & Talma.

[APPELLATE CRIMINAL JURISDICTION.]

THE KING vs. TARA SINGH.

[SINGAPORE THIRD ASSIZE CASE No. 23 OF 1931.]

Murder—Arrest by person not a policeman —Confession to such person before police arrive —admissibility.

A police officer investigating the murder of one Sunder Singh told a gathering of Sikhs to arrest the accused if they saw him. A Public Works Department Watchman saw the accused and arrested him, detaining him while another person went for the police. Before the police arrived accused without threat or inducement said to the watchman "I have killed Sunder Singh myself. I have killed two more. Let me go."

Held: the evidence of this statement was rightly admitted.

The trial Judge reserved the following Case:—

"The accused was tried and convicted of the murder of one Sunder Singh at the Rangoon Road School on the morning of the 9th April 1931. He was arrested by one Tirlok Singh, who was not a Police Officer, in Bukit Timah Road on the morning of the 14th April. Tirlok Singh had been riding on a P.W.D. lorry with one Ganga Singh, and Tirlok Singh sat with the accused on a culvert holding him by the arm while Ganga Singh went to Wayang Satu Police Station to fetch the police who subsequently arrested and hand-cuffed the accused.

"2. The Crown tendered as evidence, a statement or confession alleged to have been made by the accused to Tirlok Singh while they were waiting for the Police to come up. The confession, which was denied by the accused, was in the following words: 'I have killed Sunder Singh myself. I have to kill two more. Let me go.' This evidence when tendered by the Crown was objected to by Counsel for the defence and I had argument in chambers on the subject on several occasions. When the evidence was tendered in Court, it was formally objected to but I held that the evidence was admissible.

"3. The chief ground of objection by the accused's counsel was that Inspector Judge, a Sikh Police Inspector, had told a gathering of Sikhs on the morning of the 9th April to arrest Tara Singh. Tirlok Singh and Ganga Singh were amongst those whom he addressed but he did not address them in particular and did not even know their names. It was suggested that Tirlok was an agent of the Police and therefore was in the same position as that of a Police Officer for the purpose of Section 26 of the Evidence Ordinance. In support of his argument Mr. Stuart, accused's counsel, cited Indian authorities to the effect that a person arrested under the instructions of the Police is considered to be in Police custody and therefore that the section requiring an accused person to be brought before the Police Court within 24 hours of his arrest covered the period during which such person is under arrest on instructions of the Police. See Section 35 of the Criminal Procedure Code.

"4. I came to the conclusion that although the accused might have been considered in Police custody for the purpose of Section 35 of the Criminal Procedure Code, his confession was not made to a Police Officer within the meaning of Section 25 of the Evidence Ordinance, nor 'whilst he is in the custody of a Police Officer' under Section 26 of the Evidence Ordinance. It was also clear both from the evidence of Tirlok Singh and that of the accused himself that the confession was not caused by any inducement, threat or promise proceeding from the person in authority within the meaning of Section 24 of the Evidence Ordinance. I was of opinion that Tirlok Singh was a 'person in authority' within